IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10805 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VANABHAI BATUKBHAI VAGHARI

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

MS PUNANI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/04/2001

ORAL JUDGEMENT

1. The petitioner-Vanabhai Batukbhai Vaghari came to be detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by the Commissioner of Police, Rajkot City, Rajkot, on the 2nd September, 2000, in exercise of powers under Section 3(1) of the PASA Act. The detenu was effectively detained on the 5th September, 2000.

2. The grounds of detention indicates that the

petitioner has been branded as a dangerous person and for that purpose, seven offences registered against him under Sections 457, 380 and 114 of Indian Penal code have been considered. In addition to these offences, statements of two anonymous witnesses recorded on the 30th August, 2000 have also been considered. The detaining authority recorded a satisfaction that it was not viable to resort to alternative less drastic remedy as the petitioner was required to be immediately detained in order to prevent him from pursuing his illegal and anti-social activities detrimental to public order. The detaining authority recorded a satisfaction about the correctness and genuineness of the incidents narrated by the two anonymous witnesses and the fear expressed by these witnesses and, therefore, by exercising the powers under Section 9(2) of the PASA Act, did not disclose identity of these anonymous witnesses.

3. The petitioner-detenu, aggrieved by the order of detention, has approached this Court with this petition under Article 226 of the Constitution.

4. Ms. Pahwa, learned advocate for the petitioner, has restricted her arguments to the fact that the right of the detenu of making an effective representation is violated and, therefore, his continued detention would be vitiated. In order to support her arguments, Mr. Pahwa relied on the affidavit in reply filed by the detaining authority. She has drawn attention of this Court to the contents of paragraph 6 of the said affidavit in reply which indicates that a representation made on behalf of the detenu on November 30, 2000 was received by the detaining authority on 6.12.2000 and was decided by the detaining authority on 7.12.2000. The said decision was communicated to the jail authority on the 21st December, 2000 and the jail authority served the same on the detenu on the 23rd December, 2000. The contention that is raised before this Court by Ms. Pahwa is that the detaining authority had become functus officio and could not have decided the representation. What was required to be done was to forward the same to the Government for consideration which appears to have not been done by the detaining authority, as can be seen from the affidavit in reply. She, therefore, urged that the right of the detenu of making an effective representation assured under Article 22(5) of the Constitution is infringed and, therefore, the continued detention of the detenu would stand vitiated. The petition may be allowed and the detenu may be set at liberty forthwith.

5. Ms. Punani, learned Assistant Government Pleader

appearing for the respondents, has opposed this petition.

6. Having regard to the facts of the case and the contentions raised before this Court, certain dates are relevant. The order of detention was passed on the 2nd September, 2000, which was effected on the 5th September, 2000. The representation was made on the 30th November, 2000 to the detaining authority and the same was decided on the 7th December, 2000 by the detaining authority, i.e. nearly after three months, a date when the detaining authority had become functus officio. This aspect is not disputed factually by learned Assistant Government Pleader. After having become functus officio, the detaining authority could not have considered or decided the representation of the detenu. It was expected of the detaining authority to have forwarded the same to the Government without delay, so that representation can be considered by the Government. Instead of forwarding the same to the Government, the detaining authority has decided the representation and communicated the decision thereon to the detenu. The affidavit in reply does not disclose that the representation was also forwarded to the Government, meaning thereby that the representation was considered by an authority which had no authority to decide the same and it was not sent/forwarded to the authority which had authority to decide the same. Resultantly, the right of the detenu assured under Article 22(5) of the Constitution is infringed. The representation died a premature death and, therefore, the continued detention of the detenu would stand vitiated. The petition deserves to be allowed on this sole ground.

7. In the result, the petition is allowed. The impugned order of detention dated the 2nd September, 2000, passed against detenu-Vanabhai Batukbhai Vaghari is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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